LIBRARY
SUPREME COURT, U. S.

FILED
OCT 1 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 594

LEGAL INTEGRITY PRESERVATION SOCIETY, INC., and HENRY G. BARTSCH, *Petitioners,*

v.

EUGENE X. MURPHY, REX K. NELSON and MARY V. BOWES, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

IRVIN LECHLITER
910 Seventeenth Street, N. W.
Washington, D. C. 20006
Attorney for Legal Integrity Preservation Society, Inc.

HENRY G. BARTSCH
3601 - 34th Street, N. W.
Washington, D. C. 20008
Pro Se

FRANK W. VANDERHOOF
3600 52nd Avenue
Bladensburg, Maryland

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Question No. 1	2
Question No. 2	2
Question No. 3	3
Question No. 4	3
Constitutional Provisions involved	3
Statement of the Case	3
Reasons for granting the Writ	13
Conclusion	17
Appendix A	
Opinion of the District Court May 5, 1967	1a
Order of the District Court May 12, 1967	10a
Appendix B	
Judgment of the Court of Appeals July 3, 1968	11a
Opinion of the Court of Appeals July 3, 1968	13a
Appendix C	
Petition for Rehearing July 18, 1968	14a
Appendix D	
Order denying Petition August 5, 1968	21a

CITATIONS

CASES: Page

Beck v. Reynolds Metals Co., 163 F. 2d 870 (CCA-7, 1947) 15

S. Vance Horning, Spec. Adm. Estate of Theron E. Horning v. Ladd, 157 Cal 2d 806, 321 P. 2d 795, Dist. Ct. of Appeals, Second Dist. Div. 1 Calif. Feb. 14, 1958 14

Hazel Atlas Co. v. Hartford Co., 322 U.S. 238 16

Jamison Coal and Coke Co. v. Goltra, 143 F. 2d 889 (CCA-8) cert. den., 323 U.S. 769, 89 L. Ed. 615 65 S. Ct. 122 (1944) 13

Knauer v. United States, 328 U.S. 654 16

McCulloch v. Canadian Pac. Ry. Co., 53 F. Supp. 534 (Dist Ct. D. Minn. 4th Div. (1943) 15

Peck v. Heurich, 167 U.S. 624 (1897) 13

CONSTITUTION:

United States Constitution Amendment 5 3

STATUTES:

28 U.S.C. § 12541 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No.

LEGAL INTEGRITY PRESERVATION SOCIETY, INC., and HENRY G. BARTSCH, *Petitioners,*

v.

EUGENE X. MURPHY, REX K. NELSON and MARY V. BOWES, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Petitioners pray that a Writ of Certiorari be issued to review a Judgment entered July 3, 1968, and Rehearing Denied August 5, 1968, by the United States Court of Appeals for the District of Columbia Circuit.

CITATIONS TO OPINIONS BELOW

The Opinion and Judgment Order of the District Court is printed in Appendix A hereto, *infra,* p. 1a. The Opinion and Judgment of the Court of Appeals is printed in Appendix B hereto, *infra*, p. 11a. The Petition for Rehearing is printed in Appendix C hereto,

infra, p. 14a. The Order of the Court of Appeals denying the Appellants' Petition for Rehearing is printed in Appendix D hereto, *infra,* p. 21a. The Opinions and Judgments are unreported.

JURISDICTION

The Judgment of the Court of Appeals was entered on July 3, 1968 (R. 29-30). A timely petition for rehearing was denied August 5, 1968. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether as a matter of District of Columbia law, the death, testate, of a contracting purchaser of District of Columbia real estate tolls the time for performance of his contract until a representative of the estate is commissioned by the Probate Court, *or* whether the contracting seller, with notice of the death, may treat the deceased's down payment as forfeited upon expiration of the contract-specified time for performance, and convey to another.

2. Whether a lawyer (*who had filed a declaratory judgment claim on behalf of a client in the United States District Court for the District of Columbia and who thereafter, under the Rules of that Court, consented to the Court's dismissal of his client's claim without prejudice to its reinstatement*) is subject to dismissal of his cause for champerty when as *pro se* he subsequently undertakes to relitigate that unadjudicated claim at his own cost and expense, as consideration for his client's grant to him of an *option* to purchase the property in question.

3. Whether, as a matter of procedural law in the District of Columbia, a defendants' Motion for Dismissal of the cause of the plaintiff for champerty must be presented to, and clear through, the Bar Association; and whether the refusal, on this ground, of a United States District Judge to entertain such motion and permit supporting evidence to be adduced in Court, is a denial of due process within the contemplation of the Fifth Amendment of the Constitution of the United States.

4. Whether the *per curiam* Opinion and Judgment of the Court of Appeals entered July 3, 1968 in this cause is sound in law, fact and effect.

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment to the Constitution of the United States-

> "* * * no person shall * * * be deprived of * * * property, without due process of law; * * * *".

STATEMENT OF THE CASE

Eugene X. Murphy and Rex K. Nelson are members of the Bar of the United States District Court for the District of Columbia who practice law as the partnership "Murphy and Nelson". This Civil Action was filed by them on May 12, 1966 as plaintiffs *pro se.* Their complaint asked that the District Court grant *them* an Order "declaring the Defendant Mary V. Bowes to be the sole and lawful owner of 126 C Street, N.W., Washington, D. C." The petitioner Henry G. Bartsch and his quit claim grantee, the Legal Integrity Preservation Society, Inc., were named as co-defendants.

Jurisdiction of the District Court was assumed under the District of Columbia Code, Title 11, Section 521.

The Complaint of Murphy and Nelson predicated their standing to sue upon "a contract" they alleged to have been "entered into" on or about May *13,* 1968, the day after they filed suit. To their complaint Murphy and Nelson annexed an "Exhibit C", representing it to be a "copy" of their Sales Contract agreement with Mary V. Bowes. "Exhibit C" is *not* a copy of Murphy and Nelson's agreement with Mary V. Bowes; The *real* agreement with Mary V. Bowes provided:

> "In the event buyer cannot establish clear title in the name of seller, the deposit is to be refunded".

The only copies of the *real* agreement with Mary V. Bowes were unavailable as a part of the record on appeal until *April 23, 1968,* two days before argument of the case in the Court of Appeals. They had been removed from the District Court files by Murphy and Nelson, and it took an Order of the Court of Appeals to get Murphy and Nelson to put them back.

In July 1963, in Civil Action No. 1639-63 of the same District Court, wherein Henry G. Bartsch had sought a declaratory judgment that *he, on June 26, 1963 had no present ownership whatever in 126 C Street, N.W.,* Murphy and Nelson had, as attorneys of Mary V. Bowes, demanded a counterclaim judgment "declaring her to be the sole and lawful owner of Lot 19 in Square 574, known as 126 C Street, N.W., in the District of Columbia." They never withdrew as Bowes' attorneys in that proceeding, but permitted the action and the Bowes counterclaim to be dismissed by the Court, January 20, 1964, for want of prosecution.

Thirty days later, on February 20, 1964, Mary V. Bowes was found guilty of failing to make municipally required repairs to 126 C Street, N.W., and was given a small suspended fine. The repairs required were substantial, and failure to proceed to make them would have brought new proceedings and a heavy fine or imprisonment for non-compliance with the Municipal Order. Mary Bowes was without funds to make the repairs. More than this, the taxes and First Trust note installments were in arrears as usual, and the trustees were again threatening to foreclose.

Jacob Wall, for whom the Society had performed yeoman service and who had advanced a number of the payments on the Deed of Trust Note in 1962-1963, was prevailed upon to assume the obligation. In return for his prospective assumption of the mortgage debt, taxes and municipally-required repairs, Mary Bowes on February 20, 1964 surrendered her unrecorded 1950 deed and executed an option agreement, drafted and witnessed by Henry Bartsch, under which the foreclosure and razing of 126 C Street, N. W., would be averted and the respective interests of the Society, Wall and Mary Bowes would be established and protected to the relief and contentment of everyone involved.

Under the provisions of the February 20, 1964 agreement, Jacob Wall and others acting for the Legal Integrity Preservation Society, paid off the entire balance on the Deed of Trust Note amounting to more than $1,500.00, as well as the 1963-1964 and 1965 realty taxes and fire insurance premiums.

The February 20, 1964 agreement provided that if Jacob Wall, his heirs or assigns, did not during the

following year exercise the option to purchase 126 C Street, N. W. for $20,000 *net* to her, Mary V. Bowes would repay Jacob Wall all such sums as he had expended under his agreement.

Jacob Wall did not formally tender the $20,000 to Mary Bowes—and Mary Bowes did not repay, *but on September 3, 1965, pursuant to the option agreement,* Wall, through his attorney, Jack Olender, gave *Mary V. Bowes' attorney Michael Ritz, Jr., $2,000 to be applied as down payment on the purchase of 126 C Street, N. W., settlement to be made all cash, in sixty days. The price was $21,500 in the contract that was then signed by Bowes,* which, allowing for the recoverable credit due Wall under the February 20, 1964 agreement, was roughly the same as $20,000 *net* to her.

Twenty-seven days later, October 1, 1965, Jacob Wall died. His will of May 5, 1965 filed for probate October 26, 1965, provided-

> 12. I give, devise, and bequeath from my interest, or the proceeds of my interest in the premises known as 126 C Street, North West, Washington, D.C. the amount of $5,000 to Henry G. Bartsch."

Jacob Wall's total investment (note payments, taxes, insurance and repairs) in 126 C Street up to the time of his demise amounted to less than $5,000. The three Executors nominated in his will renounced, the last in January 1966.

On the morning of April 27, 1966, Henry Bartsch and Wilma A. Miller, President and Secretary-Treasurer of The Legal Integrity Preservation Society, Inc., were informed by Rex K. Nelson and his partner Eugene X. Murphy (Mary V. Bowes' attorneys of record in Civil Action 1639-63) that she did not intend

to abide by her contract of September 3, 1965, and that they, Murphy and Nelson, were taking the property over for themselves.

Though they denied it at trial April 11, 1967, Eugene X. Murphy and Rex K. Nelson were well informed of the interest of Jacob Wall in this property; of his will of May 5, 1965 and its provision "12" devising that interest to Henry G. Bartsch; of the filing of that will on October 26, 1965 for probate in that District Court's Administration No. 116,909; of the renunciation of the will-nominated executors; and of the resulting temporary disability of the Estate. At the hearing of their Motion for Summary Judgment before the Honorable Judge Alexander Holtzoff September 28, 1966, six months earlier, Rex K. Nelson stated in response to interrogation:

> The Court: Why didn't she (Mary V. Bowes) record the deed all this time?
>
> Mr. Nelson: I asked her that same question many times, Your Honor, and I advised her to do so. She said that her relationship with Mr. Bartsch had been on a faithfully trust basis and she saw no need to do so.
>
> * * *
>
> [9] The Court: But since this controversy arose why didn't she record the deed?
>
> Mr. Nelson: She said she didn't see any necessity of it because of the good relationship.
>
> The Court: I should think that the plaintiffs would want to have the deed recorded before they would take a conveyance.
>
> Mr. Nelson: Beg pardon?
>
> The Court: I should think the plaintiffs would insist on having the deed recorded before they entered into a contract to buy.
>
> Mr. Nelson: That was what we wanted done. However in the meantime, this deed—I had ceased

representing Mrs. Bowes and she thereupon was represented by Mr. Ritz, who is here today. The deed went from Mr. Bartsch in some fashion to a Mr. Wall, Jacob Wall, who was contemplating the purchase of this same property and who left a will—

* * *

[10] Mr. Nelson: Anyway, when we got around to purchasing the property we found this deed in the decedent Wall's lock box out in Hillcrest Heights, and the people named as executors renounced their rights and refused to go forward because there were no assets in the estate."

There yet being no Probate Court commissioned representative with authority to undertake the contract in Wall's stead, the Legal Integrity Preservation Society acted to protect itself in its rights, including the devise of Jacob Wall's will, by putting on record, April 29, 1966, a quit claim deed to 126 C Street from Henry G. Bartsch, its President and devisee of Jacob Wall.

Murphy and Nelson had advised Henry Bartsch and Wilma Miller on April 27, that Mary Bowes had another attorney, Michael Ritz, Jr., in the Washington Building. At noon, Friday, April 29, 1966, Henry Bartsch called upon Ritz and the situation was discussed in all its aspects. The meeting was cordial; Ritz and Bartsch were total strangers at the time. Ritz testified about his then-made offer, at trial April 11, 1967:

Redirect Examination (pp. 387-8)

By Mr. Bartsch:

"Q. I believe you testified earlier, Mr. Ritz, that you offered a quit claim deed from Mrs. Bowes for the sum of $20,000?

"A. Correct.

"Q. Yet you had been instrumental in having Mrs. Bowes give a warranty deed for $21,000. Why the difference?

"A. Mr. Bartsch, how could she have given you a warranty deed when you had conveyed all your interest to her?

"Q. But you said I had no interest.

"A. You had conveyed by the deed we are fighting over today. How could I have given you a warranty deed back from Mrs. Bowes?

"Q. If that's your answer, that's all right with me.

"A. I agreed to give you a quit claim deed for her interest in the property, and you were apparently satisfied because you said you were going to have Miss Miller bring in $20,000.

"Q. All right. Now, did we not discuss and had you not been advised of Jacob Wall's interest in this property by Jack Olender?

"A. I negotiated a contract to sell this property to Jacob Wall.

"Q. And the reason that it was to be a quit claim deed was that you had assumed no responsibility if Jacob Wall's estate had some interest in this property. That is what you told me at the time.

"A. No.

"Mr. Bartsch: I will testify to that then.

Ritz then testified that after "* * * you (Bartsch) reneged on your promise to pay $20,000, I mailed them (Murphy and Nelson) the contract." As to the $500 recited consideration, Ritz testified, "I deposited it in my account and I assume it went back to them."

The record subsequently established that Michael Ritz *cashed* the check at Murphy and Nelson's bank on June 28, 1966, *six weeks after the suit was filed.*

The record also subsequently revealed that the "contract" was a mere *option*, without monetary consideration. On its "*back*" it provided-

> "3. In the event buyer cannot establish clear title in the name of seller, deposit is to be refunded."

Thus, the only *actual* consideration for the Murphy and Nelson option (upon which they predicated their standing to file suit against Henry G. Bartsch and the Society) was their agreement to do so in their own names and at their own cost and expense, admitted by Rex K. Nelson at trial.

On or about May 10, 1966, Michael Ritz gave Murphy and Nelson the option to purchase 126 C Street from Mary V. Bowes with instructions to file this suit against Henry G. Bartsch and the Legal Integrity Preservation Society, Inc. At trial, Eugene X. Murphy on his certificate as an Officer of the Court, astonishingly represented that he knew nothing of the interest of Jacob Wall in the property when he filed the suit. His partner Rex K. Nelson went further; he testified *on oath*, in response to questioning by Bartsch-

> Q. Didn't you say (April 27, 1966) that you wanted to know where I could be served so you could sue me?
>
> A. Oh, No. There wasn't any reason to sue you. Why should I?

The answer is of record in the Court of Appeals. (R. 11, p. 2, 3) (R. 25) (R. 31, p. 5) Also of record for judicial noticing, is the fact that neither Michael Ritz, Jr., Eugene X. Murphy nor Rex K. Nelson deny the genuinity of this letter found in the files of the

District of Columbia Board for Condemnation of Insanitary Buildings:

April 22, 1966

"Dear Mr. Mattingly:

"Re 126 C Street, N. W.

"I trust this will be the last extension I shall have to request regarding the property as *I today prepared a contract for the sale of the property to Mr. Rex Nelson and Mr. Eugene Murphy,* two local lawyers who plan to restore the property for use as their offices.

"However, since we have had no success in amicably placing record ownership in Mrs. Bowes, my client, the legal owner, it may be *necessary to establish title by litigation against the record owner. This, Mr. Nelson and Mr. Murphy have agreed to do.*

"I regret very much the need to continue requesting extensions, *but I am sure you can appreciate the difficulty we had to overcome in establishing Mrs. Bowes,* the true owner, as the owner of record. (Emphasis added.)

Sincerely,

MICHAEL RITZ, JR."

The respondents' lack of lawful standing to sue was raised by the Petitioners' Answers to the Complaint; condemned as champerty at Pre Trial; and urged as ground for summary disposition by Motion to Dismiss made at Trial. The Trial Judge ruled on the Motion *in haec verba*:

"Take your complaints about actions of attorneys to the Bar Association, not to this Court. * * * It

will come to the Court in due course if and when the complaint (to the Bar Association) is upheld."

To this ruling the petitioner Henry G. Bartsch was granted an exception.

The District Court gave judgment to the plaintiffs (Appendix A) on the basis of sixteen (16) findings of fact and four (4) conclusions of law. The question of champerty was not therein adjudicated.

Henry G. Bartsch and the Legal Integrity Preservation Society took separate appeals to the United States Court of Appeals for the District of Columbia Circuit. By Order of Court, the appeals were consolidated.

The appeals were argued April 25, 1968; seven and one-half minutes were accorded each appellant.

On July 3, 1968 the appeal of The Legal Integrity Preservation Society, Inc., was dismissed; the judgment of the District Court against Henry G. Bartsch was affirmed. (Appendix B)

A Petition for Rehearing (Appendix C) on the question of champerty and deception of the District Court was denied August 5, 1968 (Appendix D)

Petitioners seek review of the District Court's Findings of Fact, Conclusions of Law, and Judgment of the Court of Appeals, Affirming the District Court Judgment as to Henry G. Bartsch, Dismissing the Appeal as to the Legal Integrity Preservation Society, Inc., and Denying the Petition for Rehearing on the issue of champerty and deception of the District Court.

REASONS FOR GRANTING THE WRIT

The Decision Below Is in Conflict With the Decisions of This Court and Other Appellate Courts

The Court of Appeals for the District of Columbia Circuit, in refusing to consider the fundamental question presented to it on appeal in this cause has in effect abrogated a principle of the law of the District of Columbia approved by this Court in *Peck* v. *Heurich,* 167 U.S. 624 (1897) and since (1944) respected in *Jamison Coal & Coke Company* v. *Goltra,* 143 F. 2d 889 (CCA-8) cert. denied, 323 U.S. 769, 89 L. Ed. 615, 65 S. Ct. 122.

In the case here at bar, the plaintiffs *pro se* have sued the same defendant for the same declaratory judgment which they in 1963 sought by Counterclaim in the same Court, as attorney for *Mary V. Bowes.* Their standing to sue in the complaint filed May 12, 1966 in this cause was predicated solely upon a "contract" which was nothing more than an option to purchase; the deposit being expressly refundable. (Provision No. 3 on back of plaintiff's trial exhibits Nos. 1 and 2 of "Supplemental record of District Court" filed and transmitted to the Court of Appeals April 23, 1968). The sole consideration for this option to purchase the land was the plaintiff's agreement to bring litigation against the holder of the record title (Petitioner Henry G. Bartsch) in an attempt to clear title at their own cost and expense. (pp. 353, 390, Transcript of Trial April 11, 1967)

(The counterclaim of Murphy and Nelson filed in a prior Civil Action No. 1639-63 on July 16, 1963 and dismissed without prejudice January 20, 1964, for want of prosecution, is available for judicial noticing, it

being a part of the deposition of Rex K. Nelson taken June 27, 1968 and transmitted as a part of the Original Record of the District Court.

The Refusal of the District Court To Entertain the Motion To Dismiss on the Ground of Champerty Denied the Petitioner Henry G. Bartsch the Due Process of Law Vouchsafed by the Fifth Amendment of the U. S. Constitution

There is nothing in the Federal Rules of Civil Procedure, nor in the Local Rules of the District Court for the District of Columbia, which imposes upon a defendant in a Civil Action the requirement to present and clear with the Bar Association a Plea in Bar of Champerty which is recognized as a part of the Law of the District of Columbia. The District Judge was duty bound to pass upon the question and was without authority *pro hac vice* to delegate that judicial duty to the Bar Association.

The Judgment of the Court of Appeals that the Judgment of the District Court was not *clearly* erroneous in this particular is itself *clearly* erroneous and should be revised.

The Decision of the District Court, as Sustained by the Court of Appeals, Is Contrary to the Prevailing Rule in Other Jurisdictions

It is the rule in most jurisdictions that contracts do not die with the contractor to effect a forfeiture against an Estate pending administration, unless it is expressly so provided in the contract.

J. Vance Horning, Special Adm. Estate of Theron E. Horning v. *Ladd.*

(Dist. Ct. of Appeals, Second Dist. Div. 1, California. February 24, 1958)

157 Cal. 2d 806, 321 P. 2d 795

In the case at bar, *Mary V. Bowes* declared forfeit a $2,000 down payment on a $21,500 real estate transaction and conveyed the property to her former (or present) "attorneys" Murphy and Nelson *during the period of the Estate's disability either to perform, or to enjoin performance to another.* At the time of the Bowes' deed of conveyance June 28, 1966, there was an application for Letters of Administration c.t.a. pending in No. 116,909, Estate of Jacob Wall, deceased, in the same District Court, but the administrator-applicant had not yet been commissioned.

Petitioners believe that the question of law, apparently never before decided in the jurisdiction of the District of Columbia, is of substantial public and professional interest, and can be readily decided in the case at bar as a collateral matter. That the petitioners Henry G. Bartsch and the Legal Integrity Preservation Society have sufficient status to be proper parties in this matter in their own names, is, it is submitted, well grounded in the law.

Beck v. *Reynolds Metals Co.* (CCA-7, 1947) 163 F. 2d 870, 871

McCulloch v. *Canadian Pac. Ry. Co.*, 53 F. Supp. 534, 542 (Dist. Ct. D. Minn. 4th Div.) (1943)

The Court of Appeals Erred in Its Adjudication That the Findings of Fact, Conclusions of Law and Judgment of the District Court Were Not Clearly Erroneous—

The District Court's Finding "11", that "*on April 12, 1966,* the plaintiffs entered into a written agreement with Mary V: Bowes to purchase the property (126 C Street, N. W.)" is *clearly* erroneous because there is *not one scintilla* of evidence to support this finding.

To the contrary the evidence is *conclusive* that Ritz *mailed* Mary V. Bowes' sale-acceptance "*11 days after April 29, 1966.*"

The error *is material,* because the *record* shows that the "contract" of Murphy and Nelson was not entered into *before* notice of Jacob Wall's interest was reported to Murphy and Nelson not only by Henry Bartsch on *April 27, 1966,* but by Bowes' attorney, Michael Ritz Jr.

The Correspondingly Numbered Conclusions of Law Entered May 5, 1967 in This Cause Are Deemed Clearly Erroneous:

(2) While the time for performance of Bowes' contract of September 3, 1965 was tolled until a representative of the Estate of Jacob Wall was commissioned by the Court in Administration No. 116,909, Mary V. Bowes *could not legally* convey her interest in the property to Rex Nelson and Eugene Murphy.

(3) Bartsch as a donee-beneficiary of Jacob Wall had a judicially recognizable subrogated contract claim against the property.

(4) The plaintiffs were champertors ineligible for aid of the District Court.

Petitioners Pray Review of This Case Under the Concepts and Practice Proclaimed in

Knauer v. *United States,* 328 U.S. 654, *657*
and
Hazel Atlas Co. v. *Hartford Co.,* 322 U.S. 238, *246, 249, 251*

More is in contest here than a small row house at the foot of Capitol Hill. On trial is the *practical* integrity of the Canons of the American Bar.

CONCLUSION

For these valid and varied reasons this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

IRVIN LECHLITER
910 Seventeenth Street, N. W.
Washington, D. C. 20006
Attorney for Legal Integrity Preservation Society, Inc.

HENRY G. BARTSCH
3601 - 34th Street, N. W.
Washington, D. C. 20008
Pro Se

FRANK W. VANDERHOOF
3600 52nd Avenue
Bladensburg, Maryland

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1251-66

EUGENE X. MURPHY and REX K. NELSON, *Plaintiffs*

v.

HENRY G. BARTSCH,
and
LEGAL INTEGRITY PRESERVATION SOCIETY, INC.,
MARY V. BOWES, *Defendants*

[Filed May 5, 1967]

Opinion

The plaintiffs in this case are seeking declaratory relief to remove a cloud on title to improved property located at 126 C Street, N. W., Washington, D. C. (Lot 19 in Square 574).

The plaintiffs claim legal title by reason of a conveyance from Mary V. Bowes, who in turn was the holder of an unrecorded warranty deed which she received from the defendant Henry Bartsch in 1950.

The defendant Legal Integrity Preservation Society (hereinafter called "LIPS") seeks to impress a constructive trust on the property by reason of contributions allegedly made by various persons on behalf of LIPS to service the debt, taxes and other expenses pertaining to the property.

Mary V. Bowes was joined as a nominal party defendant.

Findings of Fact

From a welter of confusing and often contradictory evidence the Court culls these findings of fact:

1. Prior to May 1950, Henry G. Bartsch, then married to Elsa N. Bartsch, was the owner of the improved prop-

erty at 126 C Street, N. W., Washington, D. C. (hereinafter "the property") which is involved in this action.

2. By warranty deed dated May 31, 1950 Bartsch conveyed all his right, title and interest in the property to the defendant Mary V. Bowes, *femme sole*. The consideration paid by Mary Bowes was some cash, the assumption of the then outstanding mortgage, the undertaking to clear up tax arrearages, and the forgiveness by her of certain debts then owing to her by Bartsch.

3. At the time of the conveyance to Mary Bowes, Bartsch and his wife Elsa were estranged and Elsa accordingly did not join in the conveyance to Mary Bowes. When recording was attempted it was refused because of the outstanding unrelinquished dower rights of Elsa Bartsch. These rights were subsequently extinguished by a final divorce, but the deed was nevertheless never recorded.

4. When Bartsch conveyed to Mary Bowes in 1950, the indebtedness, evidenced by a note secured by deed of trust, ran to the Associated Sulpicians of the United States. Although Mary Bowes claimed that she made, or caused to be made, all payments necessary to service the debt and taxes, there is evidence that Wilma Miller and Signe Bartsch (mother of the defendant Bartsch) may also have contributed to the support of the property at various times in the period between 1951 and 1963. The exact amount of any payments that may have been made by Wilma Miller or Signe Bartsch was not conclusively established, nor was it made clear why they contributed, if they did. It did appear that within such period and during her lifetime Signe Bartsch lived, substantially rent free, in the Bowes' home.

5. During the period 1951-1963 the history of the property is one of continuous trouble. There were repeated threats of foreclosure by the trustees under the deed of the trust; the taxes were generally in arrears, and the

property was not maintained properly. It was during this period that Wilma Miller claims to have made payments for the benefit of LIPS since according to her testimony the property was intended by Bartsch and her to become the permanent home of LIPS at some undetermined future date.

6. In June, 1963 Bartsch, as the record owner of the property, was named as a defendant in a criminal prosecution for violations of the D.C. Housing Code at the property. Bartsch thereupon filed a sworn complaint in this U.S. District Court (Civil Action No. 1639-63) alleging that Mary V. Bowes was the true owner of the property by reason of the conveyance to her in 1950 (Finding 2, *supra*) and asking for a declaration by the Court to that effect. While the District Court suit was pending Bartsch was convicted July 23, 1963 in the Court of General Sessions for the housing violations. He appealed and on January 8, 1964 his conviction was reversed and the case remanded for retrial. On February 20, 1964 he was retired and his warranty deed of May 31, 1950 conveying the property to Mary V. Bowes was admitted into evidence as proof that he was not the owner. The deed at this time was in the custodial possession of the plaintiff Nelson and was turned over by Nelson to Bartsch for purposes of the trial. Bartsch was acquitted of the housing violations. Subsequently Mary Bowes was charged with the same housing violations at the property and convicted as the owner thereof. This conviction was not appealed.

7. After the Bartsch acquittal and on February 20, 1964 Mary Bowes, at the suggestion of Bartsch, executed in favor of one Jacob Wall, a one-year option to purchase the property for $20,000. The option was written in longhand by Bartsch. It was also witnessed by Bartsch. The agreement provided that if Wall failed to exercise the option, Mary Bowes would reimburse Wall for "all such sums as he has and does pay on said first trust and on

taxes and assessments."[1] At or about the time the option was executed Bartsch also delivered into the custody of Wall the warranty deed of May 1950 running from Bartsch to Mrs. Bowes. This deed was never returned to Mary Bowes.

8. On April 13, 1964 Theodore Popowsky and his wife Mary Anne, acting at the behest of the said Jacob Wall, paid off the balance of the trust note owing to the Sulpicians and succeeded as creditors. The then principal and then interest on the note amounted to $1,593.89, and the accrued taxes were $497.06—total $2,090.95.

9. Wall died testate in October 1965 without having exercised his option to purchase the property. By his will dated May 5, 1965 (some two months after the expiration of the option) Wall devised to Bartsch "from my interest or the proceeds of my interest in the premises known as 126 C Street, N.W., Washington, D.C. the sum of $5,000.00."

10. The estate of Jacob Wall has asserted no claim either against the property or against Mary Bowes personally in connection with this "interest."

11. April 12, 1966 the plaintiffs Eugene X. Murphy and Rex K. Nelson entered into a written agreement with Mary Bowes to purchase the property. They deposited $500 on the purchase price of $21,500.

12. Nelson informed Bartsch of the contract to purchase the property. Therefore Bartsch hastened to execute a quitclaim deed bearing date of April 28, 1966 conveying all interest possessed by him in the property to LIPS. This deed was recorded April 29, 1966. The interest which

---

[1] It is alleged that Wall made repairs to the property and advanced certain monies, but the only clear evidence as to Wall's contribution to the property is a receipt issued to him for $359 dated August 20, 1963 from one of the trustees on the original note (Defendant's Exhibit 15(a)).

Bartsch purported to quitclaim to LIPS was the interest which he had received by way of devise from Wall. (Finding 9, *supra*).

13. June 28, 1966 Mary Bowes executed a warranty deed conveying the property to the plaintiffs Murphy and Nelson.

14. The plaintiffs have been refused recognition as owners of the property by reason of a lack of continuity of title from the last record owner, Henry G. Bartsch, as shown by the records of the Recorder of Deeds for the District of Columbia. They accordingly instituted this suit to have the quitclaim deed executed by Henry Bartsch set aside, to quiet title, and for injunctive relief against further conveyances affecting any right title and interest in the property by the defendants.

15. September 15, 1966, after commencement of this action, Wilma Miller purchased the outstanding note on the premises from the Popowsky's allegedly paying $2,500 therefor. Wilma Miller now claims that the purchase of the note was made on behalf of LIPS.

16. The Legal Integrity Preservation Society (LIPS) was incorporated in 1951 pursuant to Title 29, Chapter 6, D.C. Code (1940) as a non-profit charitable organization.

From the time of its incorporation LIPS has not been operative in any discernible manner. There have been no regular business meetings. The corporation maintains no office. The corporation has no bank account. The corporation has no records. Although Bartsch, its president, claims that it has rendered aid to three persons—an unidentified cab driver, Jacob Wall, and Mary Bowes—his allegations are so vague as not to convey any sense of doing business. For all practical purposes the corporation would appear to be nothing more or less than the alter ego of Henry G. Bartsch, used from time to time for his personal undertakings.

Although there are no records to reflect election of officers, according to Bartsch the officers are: Henry Bartsch, President, and Wilma Miller, Secretary and Treasurer.

Discussion

The defendant Bartsch on behalf of LIPS asserts a constructive trust against the property on two grounds:

(a) First, he asserts that Wall contributed monies to the support of the property thereby securing an interest therein; that Wall conveyed that interest to him; and he in turn quitclaimed it to LIPS.

(b) Secondly, he claims that the direct payments made by his deceased mother, Signe Bartsch, and Wilma Miller to the upkeep of the property were made for the benefit of LIPS and LIPS thereupon became entitled to an equitable interest in the property.

A constructive trust is imposed not because of the intention of the parties but because a person holding title to property would profit by a wrong, or would be unjustly enriched if that person was permitted to retain the property.[2] Generally a constructive trust is impressed in situations where the court finds that a person has title to real or personal property, originally acquired by wrongdoing or in a situation where property is innocently obtained but is held under such circumstances that retention of the title will result in unjust enrichment.[3] In these situations the courts will sometimes impress a trust to remedy the wrong.

It cannot be asserted in the present case that Mary Bowes obtained the property wrongfully. When she pur-

---

[2] Restatement of the Law of Trusts, Vol. 2, p. 1249; Restatement of the Law of Restitution, § 160, p. 640.

[3] Bogert, Law of Trusts, p. 208 4th ed.; *Beatty* v. *Guggenheim Exploration Co.*, 225 N.Y. 380, 122 N.E. 378 (1919); Cardozo, J. "A constructive trust is the formula through which the conscience of equity finds expression."

chased it in 1950 and secured her warranty deed from Bartsch, she paid good consideration for it. (Finding No. 2). So, if any trust is to be impressed on the property it must be because the retention of the property or the proceeds therefrom by Mary Bowes would be detrimental to LIPS by reason of the contributions allegedly made toward the support of the property on behalf of LIPS.

We look at the LIPS claims in the order set forth above.

A. Interest Allegedly Derived From Wall

Obviously when Bartsch quitclaimed to LIPS on April 28, 1966 he could only convey whatever title or interest he might have acquired through Wall's will. But on the state of the record there is no apparent interest in the property which Wall could have devised to Bartsch. The only interest Wall ever had in this property was the right to purchase it pursuant to the option contract which had been given to him by Mary Bowes under date of February 20. That option contract specifically provided that were it not exercised within its term, it would fail, and the only interest that Wall would thereupon have would be a right to reimbursement from Mary Bowes personally for any sums that might have been expended by Wall to preserve the property or service the debt. As noted in the Findings of Fact there is some very real question whether any money was advanced by Wall. But assuming *arguendo* that Wall did make advances for the benefit of the property, any claim he might have had was, by the terms of the option agreement, converted to a personal claim against Mary Bowes for reimbursement—it is not a claim against the property. A person claiming a constructive trust must have some equity in the alleged trust property and not merely a money claim against an individual holding title to property.[4]

---

[4] *Carrow* v. *Weston*, 247 N.C. 735, 102 S.E. 2d 134 (1958); *Skemp* v. *Olansky*, 249 Iowa 1, 85 N.W. 2d 580 (1957).

Under the circumstances we conclude that Wall held no interest in the property which he could devise to Bartsch and that Bartsch accordingly had no interest which he could quitclaim to LIPS.

B. Interest Derived From Mrs. Signe Bartsch and Mrs. Wilma Miller

The second claim to a constructively impressed trust is based upon the assertion that payments made toward the property by Signe Bartsch and Wilma Miller were for the benefit of LIPS.

The testimony concerning the payments is vague. But assuming some payments were made by Signe Bartsch and Wilma Miller towards the upkeep of the property, there is no evidence credible to this Court that any such payments were made at the behest of LIPS or for the benefit of LIPS, or with the intention of creating any recognizable interest in LIPS. Signe Bartsch is dead, so we will never know what she really did or what her intentions were. And the Court finds it incredible that Wilma Miller, a successful court and hearing reporter, versed in the ways of business, would be contributing for the benefit of a dormant organization such as LIPS with no legal protection of any kind whatsoever. The only reasonable conclusion at which this Court can arrive and which does in large part dovetail with the Bowes testimony, is that whatever payments, if any, were made by Wilma Miller and Signe Bartsch were advances for her personal account for which she may owe them reimbursement.

Due to the strong policy of the law in favor of security of title in land the courts generally are reluctant to disturb ownership by such devices as constructive trusts and require clear and convincing evidence to support such a remedy.[5] In the present case the evidence is neither clear

---

[5] *Elmer Co.* v. *Kemp*, 67 F. 2d 948 (9th Cir. 1933); *Leake* v. *Garrett*, 667 Ark. 415, 268 S.W. 608 (1925); *Hughes* v. *Helzer*, 182 Or. 205, 185 P. 2d 537 (1947).

nor convincing. Merely making some contributions toward payment of the deed of trust note is not in and of itself a sufficient basis for impressing a trust.

LIPS relies heavily on the case of *Doing* v. *Riley*[6] to demonstrate a situation where payments made to service a debt served as a basis to raise a constructive trust on property. However, more than mere payments or contributions were involved in the facts of that case. There the Court specifically found a joint venture between a husband and wife entered into to acquire property, construct and furnish a hotel, and towards which the parties contributed their separate funds. It was beyond dispute that except for the contributions made to prevent foreclosure, the joint venture could not have succeeded. In the instant case the Court is not convinced of such clear equities.

Conclusions of Law

The Court concludes as a matter of law:

(1) That Mary Bowes derived good title by warranty deed from Henry G. Bartsch.

(2) That notwithstanding the failure to record such title, Mary Bowes legally could convey her interest in the property to Rex Nelson and Eugene Murphy.

(3) That the defendants Bartsch and LIPS have failed to establish any claim which would cloud the title to the property.

(4) The plaintiffs are accordingly entitled to the declaratory and injunctive relief requested in order to perfect title to the property.

Counsel for the plaintiffs will submit an appropriate order consistent with these findings and conclusions.

/s/ H. F. Corcoran
Judge

Dated: May 5, 1967.

---

[6] 176 F. 2d 449 (5th Cir. 1949).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1251-66

EUGENE X. MURPHY, ET AL., *Plaintiffs*

v.

HENRY G. BARTSCH, ET AL., *Defendants*

[Filed May 12, 1967]

Order Removing Cloud on Title to Real Estate and Perfecting Title in Plaintiffs

This cause having come on for hearing on the merits of the complaint filed by the plaintiffs, and upon consideration of said complaint and all the competent evidence adduced at the trial, and the Court having made findings of facts and conclusions of law, reference to which is hereby made, it is, by the Court, this 12 day of May 1967,

ORDERED, ADJUDGED and DECREED, that the title to that certain piece or parcel of land, together with improvements thereon, situate in the District of Columbia, known as Lot 19 in Square 574, improved by premises No. 126 C Street, N.W., be and the same is vested in the plaintiffs, Eugene X. Murphy and Rex K. Nelson, by virtue of that certain Deed from Mary Bowes, dated June 28, 1966 and recorded among the Land Records of the District of Columbia in Liber 12632 at folio 113, and that said Deed conveyed a good and indefeasible fee simple title to said real estate to said plaintiffs, Eugene X. Murphy and Rex K. Nelson, expunging the alleged interests of the defendants and all persons claiming any right, title or interest in said real estate by or through the defendants, or any of them, and it is further,

ORDERED, ADJUDGED and DECREED, that the certain quit-claim Deed executed by Henry G. Bartsch, dated April 28, 1966 and recorded among the Land Records of the District

of Columbia in Liber 12602 at folio 446, be and the same is hereby expunged from the record and declared null and void.

The plaintiffs are awarded their costs of this suit.

/s/ H. F. Corcoran
Judge

[Certificate of Service dated May 11, 1967.]

APPENDIX B

[Filed July 3, 1968]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
SEPTEMBER TERM, 1967

Civil 1251-66

No. 20995

Henry G. Bartsch, *Appellant*,

v.

Eugene X. Murphy and Rex K. Nelson, and
Mary V. Bowes, *Appellees*.

No. 21,093

Legal Integrity Preservation Society, *Appellant*,

v.

Eugene X. Murphy and Rex K. Nelson, et al., *Appellees*.

Appeals from the United States District Court for the District of Columbia

Before: Bazelon, Chief Judge, Fahy, Senior Circuit Judge, and Wright, Circuit Judge.

Judgment

These causes came on to be heard on the record on appeals from the United States District Court for the District of Columbia and were argued by appellant *pro se* and appellee, Nelson, *pro se* and for appellee Murphy in No. 20,995, and by counsel for appellant and appellee, Nelson, *pro se* and for appellee Murphy in No. 21,093.

On Consideration Thereof; it is ordered and adjudged by this Court that the judgment of the District Court appealed from is affirmed in case No. 20,995, and

It is further ordered and adjudged by this Court that the appeal in case No. 21,093 is dismissed.

Per Curiam

Dated: July 3, 1968

[Not to be printed or submitted to West for publication]

[Filed July 3, 1968]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20995

HENRY G. BARTSCH, *Appellant,*

v.

EUGENE X. MURPHY and REX K. NELSON, and MARY V. BOWES, *Appellees.*

No. 21,093

LEGAL INTEGRITY PRESERVATION SOCIETY, *Appellant,*

v.

EUGENE X. MURPHY and REX K. NELSON, ET AL., *Appellees.*

Appeals from the United States District Court for the District of Columbia

Decided July 3, 1968

Mr. Henry G. Bartsch, appellant pro se in No. 20,995.

Mr. R. Kenneth Mundy for appellant in No. 21,093.

Mr. Rex K. Nelson, appellee pro se and for appellee Murphy.

Mr. Michael Ritz, Jr. entered an appearance for appellee Bowes.

Before BAZELON, *Chief Judge,* FAHY, *Senior Circuit Judge* and WRIGHT, *Circuit Judge.*

PER CURIAM: These appeals are from a declaratory judgment removing a cloud on title to real property in the District of Columbia. Appellants urge that they acquired

interests in the property under the will of a deceased optionholder and by virtue of contributions to prevent foreclosure. These theories were explored at great labor by the District Judge, who declined to decree a constructive trust. His findings of fact are not clearly erroneous. They amply support his conclusions. We therefore find no error affecting substantial rights of any of the parties.

No. 21,093 is *dismissed.*
No. 20,995 is *affirmed.*

APPENDIX C

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,995

HENRY G. BARTSCH, *Appellant,*

v.

EUGENE X. MURPHY and REX K. NELSON; *Appellees,*
MARY V. BOWES, *Intervenor.*

No. 21,093

LEGAL INTEGRITY PRESERVATION SOCIETY, INC., *Appellant,*

v.

EUGENE X. MURPHY and REX K. NELSON, *Appellees,*
MARY V. BOWES, *Intervenor.*

PETITION FOR REHEARING ON PER CURIAM ORDER OF JULY 3, 1968

The Legal Integrity Preservation Society, Inc., by its counsel, and Henry G. Bartsch, pro se, respectfully solicit reconsideration and supplementation or modification of the

per curiam Order of July 3, 1968 herein dismissing the Appeal of the Legal Integrity Preservation Society, Inc. and affirming the appealed judgment of the District Court against the appellant, Henry G. Bartsch.

Specifically, your petitioners pray that the United States Court of Appeals for the District of Columbia Circuit rehear and expressly rule upon the *challenged standing* of the appellee-plaintiffs Rex K. Nelson and Eugene X. Murphy to have brought and maintained the suit below in Equity and to have sustained the judgment entered May 12, 1967 with costs against the appellant defendants Henry G. Bartsch and the Legal Integrity Preservation Society, Inc.

Your petitioners believe the rule of law for this jurisdiction to be that

(284) "We must regard an agreement by any attorney to undertake the conduct of a litigation on his own account, to pay the costs and expenses and to receive as his compensation a portion of the proceeds of the (xxx) thing in dispute as obnoxious to the law against champerty".

Peck v. *Heurich,* 6 App. D.C. 273, *284* affirmed 167 U.S. 624

There, as in the case here at bar:

(284) "The very thing in dispute was conveyed or sought to be conveyed in advance to the attorney to conduct the litigation on his own account and at his own cost and expense."

The record in this cause shows the standing of the plaintiffs to have been challenged in the defendants' Answers (JA 17, 19) to the Complaint; renewed and explained in detail at Pretrial (JA 24); formally moved at Trial (JA 49, 50, 114) and specifically re-presented for this Court's determination on appeal (Appellant's Brief pp.

(i) 8, 9, 10, 11, 12, 15). The per curiam Order of July 3, 1968 neither rules upon the issue of appellee-plaintiffs standing to sue and sustain the District Court's judgment, nor does it offer any explanation for the absence of such ruling therein.

If the omission was an unintentional oversight, petitioners respectfully ask that the July 3, 1968 Order be amended.

If the Court regarded the question of standing to be immaterial or irrelevant, petitioners respectfully ask that the July 3, 1968 Order be amended to so state.

If the Court concluded that the petitioners, for procedural or any other reason, were without right to raise the question of standing, the petitioners respectfully ask that it be so stated in a new Final Order in this Appeal.

If the Court regards the rule in *Peck* v. *Heurich* to be inapplicable to the facts and issues of the case at bar, the petitioners respectfully ask that the rationale of that conclusion be set out.

If the Court, for reasons of public policy, intended simply to abrogate Rule of Champerty in this jurisdiction by ignoring the question, your petitioners need, and are entitled, to be so informed.

The matter is of substantial concern to the appellants and it is of unquestionable interest to the Legal Profession in its service and relation to the Public. Your petitioners deem the matter to be of sufficient importance to merit formal application for a Writ of Certiorari to the Supreme Court of the United States. Without more information than can be gleaned from the per curiam Order of July 3, 1968, your petitioners stand critically handicapped and precluded from succinct presentation of the case in conformity with the rules and practice in the Supreme Court.

In connection with this petition, the Court should especially note:—

1. On September 3, 1965, Bowes' attorney Ritz accepted $2,000 from Wall's attorney, Jack Olender, as consideration for "getting the contract pursuant to the option". Settlement was to be held in 60 days from September 3, 1965. "The contracting purchasers were Mark Mobile Homes, Inc. and John A. Klingerman." They were represented as straw parties for Jacob Wall. (JA 23, 51-52)

2. Jacob Wall died testate on October 1, 1965, devising and bequeathing $5,000 of his interest (*his entire investment*) in 126 C Street to Bartsch. Bartsch testified that Wall's intent was to vest this interest in Bartsch as trustee of the Legal Integrity Preservation Society, Inc., which Society was agreed by its directors to be renamed the Wall Foundation. (JA 193, 194)

3. Ritz, Murphy and Nelson have sought to make their entire case upon the disclaimer suit filed by Henry Bartsch (CA 1639-63). (JA 9-14). The option agreement between Jacob Wall and Mary V. Bowes and her coincident surrender to Wall of the unrecorded 1950 deed took place on *February 20, 1964, a month after* the District Court's voluntary dismissal of that suit and the counterclaim filed therein by Murphy and Nelson as Bowes' attorneys seeking *the same declaratory judgment in Bowes' name as they* demanded in Civil Action No. 1251-66 as *plaintiffs pro se.*

4. The Court should recognize that nothing in the earlier suit (CA 1639-63) works any estoppel vs. legal or equitable rights of Bartsch accruing *after* January 20, 1964, nor against Jacob Wall, nor the Legal Integrity Preservation Society, nor the noteholder secured by the First Deed of Trust of record.

Likewise, the Court should note that not only has Bowes failed to repay Wall or his Estate as provided in the "option" agreement of February 20, 1964, she has not

paid one cent on the First Trust indebtedness, taxes and repairs of 126 C Street from February 20, 1965 up to the time of this litigation, and she contends she owes no one anything.

5. Ritz was well informed of Wall's death; was well informed of the provision for Bartsch in the Wall will filed for probate in Administration No. 116909; and of the fact that an Administrator CTA had not been appointed. Ritz knew that under equitable principles, the last date for performance of the September 3, 1965 contract (which had more than a month to run when Wall died) should have been tolled until the Wall estate had a Court appointed Administrator CTA with authority to perform the contract.

Instead, Ritz worked up a plan with Murphy and Nelson to *re-sue Bartsch* and he obtained their agreement to do so at their expense. (Letter of April 22, 1966 of Ritz to Mattingly judicially noticed by the Court as genuine in denial of Motion to Advance entered March 5, 1968; and p. 2 of "Contract" placed in the record as Plaintiffs' Exhibit # 1 pursuant to Court Order of April 19, 1968.)

Nelson testified on oath at Trial, April 11, 1967 (JA 254) that he did not threaten to sue Bartsch on April 27, 1966; that he had no reason to sue him. (JA 254) Ritz and Murphy, members of the bar of the District of Columbia were present. By their silence as Officers of the Court, they sanctioned and corroborated this testimony. The Court cannot in self-respect overlook that neither Nelson, Murphy nor Ritz can deny that Nelson and Murphy *were under agreement (as the sole actual consideration for the Contract of April 22, 1966)* to "establish title by litigation against the record owner." (Bartsch)! Not one cent was received from Murphy and Nelson until Ritz in person took a Murphy and Nelson law firm check to their bank and "cashed" it (Plaintiffs' Exhibit # 5) on *June 28,*

1968, more than six weeks *after* the suit at Bar had been filed for Declaratory Judgment against Bartsch.

6. Under all the circumstances of this case, for Bartsch to have yielded to the strategy of Murphy and Nelson without protecting the interest of the Legal Integrity Preservation Society, Inc., would have been a breach of his trust as an officer of that Society.

Should the District Court or the U.S. Court of Appeals for the District of Columbia Circuit be of the opinion that in today's moral and professional climate the Rule of Champerty of Peck v. Heurich is mature for abrogation, certainly the judicially noticeable conduct of the attorneys Ritz, Murphy and Nelson in this cause hardly qualifies *this case* as the vehicle for such a change in the law of the District of Columbia.

Respectfully submitted,

R. KENNETH MUNDY
Solar Building
1000 - 16th Street, N. W.
Washington, D. C. 20036
Attorney for Legal Integrity Preservation Society, Inc.

HENRY G. BARTSCH
508 F Street, N. W.
Washington, D. C. 20001
Pro Se

CERTIFICATE

This petition is presented under the authority of Rule 26 of this Court. It is made in good faith and not for delay.

R. KENNETH MUNDY

CERTIFICATE OF SERVICE

A copy of the foregoing petition was served this 18th day of July, 1968 upon Counsel for the Appellees and the Intervenor Bowes.

HENRY G. BARTSCH

APPENDIX D

[Filed August 5, 1968]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
SEPTEMBER TERM, 1967

Civil 1251-66

No. 20995

HENRY G. BARTSCH, *Appellant*,

v.

EUGENE X. MURPHY and REX K. NELSON, and
MARY V. BOWES, *Appellees*.

No. 21,093

LEGAL INTEGRITY PRESERVATION SOCIETY, *Appellant*,

v.

EUGENE X. MURPHY and REX K. NELSON, ET AL., *Appellees*.

Before: Bazelon, Chief Judge; Fahy, Senior Circuit Judge; Wright, Circuit Judge, in Chambers.

Order

On consideration of appellant's petition for rehearing, it is

ORDERED by the Court that appellant's aforesaid petition is denied.

Per Curiam.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 29 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 594

LEGAL INTEGRITY PRESERVATION SOCIETY, INC., and HENRY G. BARTSCH,

Petitioners,

v.

EUGENE X. MURPHY, REX K. NELSON and MARY V. BOWES,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

MEMORANDUM FOR EUGENE X. MURPHY AND REX K. NELSON IN OPPOSITION

EUGENE X. MURPHY
REX K. NELSON
419 - 4th Street, N. W.
Washington, D. C. 20001

Pro Se

WILSON - EPES PRINTING CO. - RE 7-6002 - WASHINGTON, D. C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 594

LEGAL INTEGRITY PRESERVATION SOCIETY, INC., and HENRY G. BARTSCH,

Petitioners,

v.

EUGENE X. MURPHY, REX K. NELSON and MARY V. BOWES,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

MEMORANDUM FOR EUGENE X. MURPHY AND REX K. NELSON IN OPPOSITION

Petitioner Bartsch owned premises 126 C Street, N. W., in the late 1940s when he became embroiled in a running legal pro se battle with his wife and her counsel. He was jailed on a number of occasions for contempt and he moved to Maryland where he stayed about ten years to avoid arrest. He borrowed money from Mary V. Bowes to pay alimony and mortgage payments to avoid foreclosure of 126 C Street. He never repaid her. She purchased the property from him. He executed and delivered to her his

warranty deed. She never recorded it. He organized the Legal Integrity Preservation Society, Inc., to clear up corruption in the local bar and he became its first and only president. It had no place of business, no regular meetings, no books and no bank account.

Bartsch wanted 126 C Street as a base for his corporation and drafted and procured Mary Bowes' signature to an option giving his friend, Jake Wall, a one-year option to purchase. He had Mary Bowes deliver her unrecorded deed to Wall so, he thought, she would not be able to sell the property to anyone else. Wall did not exercise the option and permitted it to lapse and thereafter died leaving by will a bequest of $5,000 to Bartsch from his interest in 126 C Street which he had never acquired.*

Respondents Murphy and Nelson contracted with Mary Bowes' counsel to purchase 126 C Street for use as an office. Upon learning of this Bartsch executed a quit claim deed conveying the property to his corporation, Legal Integrity Preservation Society, Inc. Mary Bowes then conveyed the property to Murphy and Nelson by warranty deed, but because she had never recorded her deed and because Jake Wall and Bartsch refused her demands to return her deed the land tax division of the District of Columbia government refused to recognize the change in ownership for lack of continuity of title. Murphy and Nelson then filed suit for declaratory judgment naming Bartsch and Mary V. Bowes as nominal parties.

Bartsch and the Society answered generally denying but made no affirmative claim either cross or counter. At pre-trial Bartsch, pro se, attempted to interject the issue

---

* Mary Bowes agreed to reimburse Wall for any expense he undertook in connection with the house if he did not exercise his option to purchase. The actual transfer of her unrecorded deed was a simple attempt to prevent a sale to anyone else. Wall, apparently at Bartsch's suggestion, had some of his relatives pay off a small balance on the mortgage. The relatives contended it was a loan to Wall. Mary Bowes knew nothing of this transaction.

of champerty. The examiner rejected his attempt and he did not file an objection with the court. The rejection of the examiner accordingly became the order of the Court under the rules. The Society did not contest title, but contended it was entitled to a constructive trust. It raised no issue of champerty.

The District Court found for respondents and entered a detailed Opinion and Findings of Fact (See Petition, Appendix A, pages 1a to 9a), and entered judgment (Appendix A, page 10a) vesting title to the property in respondents. Petitioners took an appeal, but Bartsch had no point to argue on appeal and accordingly made no assignments of error. The Society assigned champerty as error, as well as the failure of the Court to find a constructive trust in its favor. The Society abandoned champerty as an assignment of error, however, and argued a constructive trust only.

Petitioners' Question 2 (champerty) accordingly was not before the District Court or the Court of Appeals. In any event, respondents did not represent Mary V. Bowes at the time of the purchase, and all negotiations for purchase of the property were conducted through her own counsel. This litigation was necessitated only by Bartsch's refusal to return her deed to her for recording and his quitclaim deed which conveyed nothing. No champerty was involved regardless of the procedures involved.

Petitioners' Question No. 1 was not raised by the pleadings in the District Court. It was not raised during trial of the issues. It was not assigned as error before the Court of Appeals. Neither of the petitioners had any interest in the matter in any event and had no standing to litigate the matter. They still have no interest or standing to raise such an issue. Further, they misstate the facts.

Due process has been more than fully accorded to the petitioners. They present no reason for consideration by this Court and their petition for a writ of certiorari should be denied.

Respectfully submitted,

EUGENE X. MURPHY
REX K. NELSON
Pro Se

October 1968

LIBRARY
SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

SUPREME COURT, U.S.
FILED
NOV 1 1968
JOHN F. DAVIS, CLERK

No. 594

LEGAL INTEGRITY PRESERVATION SOCIETY, INC., and HENRY G. BARTSCH, *Petitioners,*

v.

EUGENE X. MURPHY, REX K. NELSON and MARY V. BOWES, *Respondents.*

PETITIONERS' BRIEF IN REPLY TO MEMORANDUM OF EUGENE X. MURPHY AND REX K. NELSON, RESPONDENTS PRO SE

IRVIN LECHLITER
910 Seventeenth Street, N.W.
Washington, D. C. 20006
Attorney for Legal Integrity Preservation Society, Inc.

HENRY G. BARTSCH
3601 - 34th Street, N.W.
Washington, D. C. 20008
Pro Se

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No.

LEGAL INTEGRITY PRESERVATION SOCIETY, INC., and HENRY G. BARTSCH, *Petitioners,*

v.

EUGENE X. MURPHY, REX K. NELSON and MARY V. BOWES, *Respondents.*

PETITIONERS' BRIEF IN REPLY TO MEMORANDUM OF EUGENE X. MURPHY AND REX K. NELSON, RESPONDENTS PRO SE

The narrative statement constituting pages "1" and "2" of the only Respondent's Memorandum in Opposition is manifestly irrelevant to Questions "1", "2", "3", "4" and the Reasons presented in the Petition for Writ of Certiorari. It discloses no matter or ground why the cause should not be reviewed by this Court.

The Memorandum of Eugene X. Murphy and Rex K. Nelson, now Respondents *per se* and *pro se,* does not dispute these facts established by the record below in this cause:

1. That Eugene X. Murphy and Rex K. Nelson are Members of the Bar of the U.S. District Court for the District of Columbia, who practice law therein under the partnership name of "Murphy and Nelson".

2. That they entered into an agreement with Mary V. Bowes to institute and prosecute this litigation *in their own names as plaintiffs.*

3. That they agreed to pay the entire cost and expense of the litigation.

4. That their agreement absolved Mary V. Bowes of any obligation to repay them the costs and expenses of the litigation, regardless of its outcome.

5. That Murphy and Nelson did not have Mary V. Bowes assent to the agreement until May 10, 1966.

6. That Murphy and Nelson were on, May 10, 1966, informed of Jacob Wall's option of February 20, 1964 and of the contract of September 3, 1965 pursuant thereto; of Jacob Wall's supervening death on October 1, 1965; of Administration No. 116,909, Estate of Jacob Wall, deceased, in the Probate Division of the District Court; of paragraph "12" of Jacob Wall's Will, providing for devise of his prospective interest in 126 C Street, N.W. to the petitioner Henry G. Bartsch; and of the pendency of the application of Nathaniel Preston for appointment as Administrator, c.t.a. of the Estate of Jacob Wall on the date (June 28, 1966) when Murphy, Nelson and Michael Ritz, Jr., another at-

torney of Mary V. Bowes, prevailed upon her to execute a warranty deed for that property to Eugene X. Murphy and Rex K. Nelson.

7. That Murphy and Nelson's agreement with Mary V. Bowes provided that Murphy and Nelson would have the right to buy 126 C Street, N.W. from her *if they by litigation as plaintiffs pro se* could establish clear title to the property in Bowes' name.

8. That in the event the proposed law suit was unsuccessful in establishing clear title in Mary V. Bowes, Murphy and Nelson were under no obligation to pay her anything for the technical assignment of her interest *pendente lite.*

9. That no monetary consideration passed prior to June 8, 1966 when the petitioners filed their answers to the "complaint" of Eugene X. Murphy and Rex K. Nelson giving notice therein that the plaintiff's alleged "contract" was not "lawful, bona fide and enforceable" and that it afforded the plaintiff "no cause of action upon which the Court may grant them, or either of them, the relief they pray".

10. That Mary V. Bowes executed (and Murphy and Nelson recorded) a purported "warranty" deed for 126 C Street, N.W. on June 28, 1966, three weeks after service upon them of the petitioners' answers to the complaint. That for this warranty deed, Michael Ritz, Jr. (acting as attorney for Mary V. Bowes) accepted $500 and Murphy and Nelson's unsecured, unrecorded, promise to pay $21,000 additional—obviously unenforceable should the then pending litigation fail.

11. That the aforesaid $500 "consideration" was made by a Murphy and Nelson law firm check inscribed

with the date "April 22, 1966" thereby requiring Bowes to refund it (as the "deposit" identified in Murphy and Nelson's submitted "contract" offer of that date) should the pending litigation fail.

12. That Michael Ritz, Jr., entered his appearance in the Murphy and Nelson lawsuit on July 15, 1966 (three weeks after Bowes' delivery of a warranty deed) and made answer on behalf of Mary V. Bowes admitting all of the allegations of the complaint but acknowledging that Mary V. Bowes' 15-year-unrecorded deed to 126 C Street, N.W. was in the possession of Jacob Wall's estate.

13. That the Declaratory Judgment sought by the Murphy and Nelson *pro se* lawsuit is the *same as* that sought by them in Civil Action 1639-63 *as attorneys of Mary V. Bowes,* which Civil Action No. 1639-63 was dismissed by the District Court on January 20, 1964 without prejudice to reinstatement.

14. That Murphy and Nelson have never withdrawn as Mary V. Bowes' attorneys of record in Civil Action 1639-63.

IT IS OF RECORD IN THIS COURT—

15. That the respondent Mary V. Bowes and her attorney of record, Michael Ritz, Jr., have elected not to respond to this Petition for Writ of Certiorari.

16. That Eugene X. Murphy and Rex K. Nelson have elected not to deny that their suit is tainted by champerty, but to oppose the petition on the ground that the petitioners failed to raise and maintain the issue adequately in the proceedings below and that therefore, as a matter of *procedural* law, the question is not reviewable by this Court.

17. That the Memorandum filed in *Opposition* to the grant of the Petition for Certiorari in this cause fails to cite a single authority in support of its ventured conclusions.

The Conclusions of the Respondents Eugene X. Murphy and Rex K. Nelson Are Contrary to the Established Law

Noonan v. *Gilbert,* 63 Appeals D.C. 30, 68 Fed. 2nd, *775, 776:*

> "In the Norris Case (Providence Tool Co. v. Norris, 2 Wall. 45, 17 L. Ed. 868;) the court said: 'Agreements for compensation contingent upon success, suggest the use of sinister and corrupt means for the accomplishment of the end desired. The law meets the suggestion of evil, and strikes down the contract from its inception.' 2 Wall. at page 55, 17 L. Ed. 868. The court further observed that 'the decisions have not turned upon the question, whether improper influences were contemplated or used, but upon the corrupting tendency of the agreements.'
>
> * * * *
>
> "That the contract in the present case was contingent in part is clear. While plaintiff was to receive $500 in any event, the payment of the additional $500 was contingent upon success. 'Every part of the consideration goes equally to the whole promise, and therefore, if any part of it is contrary to public policy, the whole promise falls.' Hazelton v. Sheckells, 202 U.S. 71, 78, 26 S. Ct. 567, 50 L. Ed. 939, 6 Ann. Cas. 217. 'That which is bad destroys that which is good, and they perish together.' Trist v. Child, 21 Wall. 441, 452, 22 L. Ed. 623.
>
> [4] Defendant reserved no exception to the action of the court in overruling his demurrer to the amended declaration, and, while he moved for

a directed verdict at the close of plaintiff's evidence, he failed to renew the motion at the close of all the evidence. But a court in the due administration of justice is bound to refuse its aid to enforce a contract that offends public policy. The invalidity of the contract may not be waived 'by any system of pleading, or even by the express stipulation of the parties.' The question 'was one which the court itself was bound to raise in the interest of the due administration of justice.' Oscanyan v. Winchester Repeating Arms Co., 103 U.S. 261, 267, 26 L. Ed. 539; Steele v. Drummond, 275 U.S. 199, 204, 48 S. Ct. 53, 72 L. Ed. 238.

Judgment reversed, with costs, and the cause remanded, with directions to enter judgment on the pleadings in accordance with this opinion.

Reversed and remanded."

Merlaud v. *Nat'l. Metro. Bank of Wash., D. C.*, 65 App. D.C. 385, 84 Fed. 2d, 238, *240:*

"By the common law prevailing in this District an agreement by an attorney at law to prosecute at his own expense a suit to recover land in which he personally has and claims no title or interest in consideration of receiving a certain portion of what he may recover is unlawful and void for champerty. Peck v. Heurich, 167 U.S. 624, 17 S. Ct. 927, 930, 42 L. Ed. 302. In the instant case Merlaud was to receive repayment of any and all sums so paid by him from such sum as might be awarded the Hunters "from the said estate," and to be paid a commission "on the amount got in and recovered." As the court observed in the Heurich Case, "if this be not champerty, we fail to see wherein there can be champerty." The character of the enterprise on the part of Merlaud was plainly speculative, and the agreement he is seeking to enforce is champertous and void. A court in the due administration of justice is bound

to refuse its aid to enforce such a contract. Oscanyan v. Winchester Repeating Arms Co., 103 U.S. 261, 26 L. Ed. 539; Weil v. Neary, 278 U.S. 160, 49 S. Ct. 144, 145, 73 L. Ed. 243; Noonan v. Gilbert, 63 App. D.C. 30, 67 F.(2d) 775; Miles v. Mutual Reserve Fund Life Association, 108 Wis. 421, 84 N.W. 159. In the Weil Case the court said: 'Where a party seeks to enforce a contract, and it is found to be invalid because contrary to public policy, the usual result is that the court dismisses the action and leaves the parties as it finds them.'"

Weil v. *Neary*, 278 U.S. 160, *173, 174*, 40 S. Ct. 144, 145, 73 L. Ed. 243:

"The chief argument that is pressed upon us to declare the contract valid and to sustain the judgment based upon it, is the success with which the plaintiff is found to have worked out a useful settlement of the estate for the benefit of the creditors, and the absence of any finding or showing that there was actual fraud. But this is not a sufficient answer to the charge of illegality. The contract is contrary to public policy—plainly so. What is struck at in the refusal to enforce contracts of this kind is not only actual evil results but their tendency to evil in other cases. Even if the ultimate results in the management of the Thompson estate were good, that could be no excuse for a contract plainly illegal, because tending to produce the recognized abuses which follow fraud and disloyalty by agents and trustees. Enforcement of such contracts when actual evil does not follow would destroy the safeguards of the law and lessen the prevention of abuses. *Tool Co.* v. *Norris*, 2 Wall. 45; *Woodstock Iron Co.* v. *Richmond Extension Co.*, 129 U.S. 643; *Oscanyan* v. *Arms Co.*, 103 U.S. 261; *Meguire* v. *Corwine*, 101 U.S. 108; *Connors* v. *Connolly*, 86 Conn. 641; *Richardson* v. *Crandall*, 48 N.Y. 348; *Palmbaum* v.

Magulsky, 217 Mass. 306, 308. But we must not be understood as implying that no harm resulted to the Thompson estate or its creditors.

We conclude that the contract set up by Untermyer in the amended petition, framed to meet the evidence, is in violation of public policy and professional ethics. Such a transaction between counsel calls for judicial condemnation. This requires a reversal of the judgment of the court below."

Mud Valley Oil and Gas Co. v. *Hitchcock,* 40 Ind. Appeals 105; 81 N.E. 111, *112, 113:*

"Returning to the question for decision, it will be observed that maintenance is defined to be "an officious intermeddling in a suit that no way belongs to one, by maintaining or assisting either party, with money or otherwise, to prosecute or defend it. Anderson's Law Dictionary; 2 Chit. C. L. 233, note (a). Champerty is said to be 'a species of maintenance, being a bargain with the plaintiff or defendant to divide land or other matter sued for between them if they prevail at law, whereupon the champertor is to carry the party suit at his own expense.' 2 Words & Phrases, 1047. It is 'the unlawful maintenance of a suit in consideration of some bargain to have a part of the thing in dispute or some profit out of it.' Anderson's Law Dictionary.

* * * *

"The case at bar is founded upon an executory contract which is said to be champertous. It expressly provides for the bringing of a suit to quiet title to the oil and gas covered by a lease theretofore executed. It further stipulates that such suit shall be carried on at the cost and expense of appellant. It stipulates for a division of the subject-matter in suit between the parties thereto in case the suit is successful. It has all the elements found

in the definition of champerty. Such contracts, called in question, even in the light of modern authority, will not be approved and enforced by the courts, unless shown to be above suspicion of a purpose of stirring up baseless strife and litigation, or of harassing others with suits, which otherwise would not be commenced, or for spoil or speculation. Peck v. Heurich, 167 U.S. 624, 630, 17 Sup. Ct. 927, 42 L. Ed. 302, and cases there cited; Belding v. Smythe, 138 Mass. 530; Lancy v. Havender, 146 Mass. 615, 16 N.E. 464; Scobey v. Ross, 13 Ind. 117; Coquillard's Adm'r v. Bearss, 21 Ind. 479, 83 Am. Dec. 362; Gilbert v. Holmes, 64 Ill. 548, 555, 556; Miller v. Larson, 19 Wis. 463.

* * * *

"It must be admitted that the facts here show that both parties to the contract had in mind the bringing of a suit with a view of pecuniary advantage to be derived from the very thing covered by the lease to be by that suit declared invalid, and to which appellant was an entire stranger, except the interest a successful suit, followed by a lease, would give it.

* * * *

"With all reasonable presumptions against the pleader, this case, as made by the complaint, does not, in our opinion, meet the requirements of the law requiring such transactions to be in good faith and free from oppression of the rights of another. From this conclusion, it follows that the contract in question was against sound public policy, and within the mischief to be guarded against in the administration of justice, and therefore unenforceable. In the disposition of this case, we are not unmindful of the legal principles supporting property rights, and the right of disposition of that which the owner may lawfully sell, together with the right of the purchaser to all remedies the law may afford to enable him to possess and enjoy the

subject of his purchase. These principles are based upon the policy of the law favoring peaceful and undisturbed enjoyment of property rights, and against agitation of such rights brought about by speculative litigation, as here exhibited by the complaint."

Miles v. *Mutual Reserve Fund Life Ass'n.*, 108 Wis. 421, 84 N.W. 159, *163, 164:*

"It is insisted by counsel for appellant that the trial court should have granted their motion for the direction of a verdict, if for no other reason, because the assignment of the alleged cause of action by Mrs. Toepel to her attorney, the respondent herein, pending the action to enforce it, was champertous and absolutely void. While the common-law doctrine as to champerty and maintenance is, in its main features, in force in this state (Barker v. Barker, 14 Wis. 131; Martin v. Veeder, 20 Wis. 466), it has not been applied heretofore, in any case in this court, to the purchase, by an attorney, of the claim of his client in a pending suit to be enforced in such suit at the expense and for the benefit of such attorney. The cases that have been decided here, where champerty was involved, were of the kind more generally met with, and with which the courts are more familiar, i.e. those where an attorney prosecutes a suit under a contract to pay the expenses of the litigation and to have an interest in the recovery. The real mischief which the law of champerty aims to prevent is that of encouraging litigation by persons who have no interest therein independent of that to be derived from carrying it on in whole or in part at his expense. That vice exists where an attorney purchases the claim of his client in suit with the intent to thereafter carry on the litigation at his own expense and for his own benefit, the same as where he agrees to carry on litigation at his own expense, in whole or in part, in the name of an-

other. Such a transaction is, on common-law principles, held to fall under the condemnation of the law of champerty and to be absolutely void. Arden v. Patterson, 5 Johns. Ch. 44; West v. Raymond, 21 Ind. 305; Greenman v. Cohee, 61 Ind. 201; Greenh. Pub. Pol. p. 437; Simpson v. Lamb, 40 Eng. Law & Eq. 59; s. c. 90 E. C. I. 84; Weeks, Attys. at Law, 552. In Simpson v. Lamb, it was said, in effect, that independent of any statute an attorney is, by relation to his client, incapacitated from purchasing of him anything in litigation of which the attorney has the management. "Considering," said the court, "the relation in which the attorney and client stand to each other, it would seem to be against the policy of the law to permit such a dealing by an attorney with the subject of a suit of which he has the conduct as the attorney, while the case is still undetermined by judgment, as that which is now in question before us.

"Thus stands the common-law rule as recognized by the courts of England and the courts of this country as well, where the common-law doctrine of champerty has been in the main adopted. Attorneys are officers of the court and charged as such with duties in the administration of justice entirely inconsistent with liberty to traffic in the subjects of the litigations of which they have the management. The law which condemns such transactions necessarily renders them absolutely void, and when a court is requested to refuse to aid in carrying out such a transaction by a motion to dismiss the action in which the champertous agreement is involved, the motion should be granted. Moreover, the court may properly act on its own motion in dismissing the action, upon the illegal character of the transaction involved becoming apparent. When a trial court is made fully acquainted with the fact that a suit on trial before it is tainted with champerty, a failure to refuse to proceed therein in effect makes such court a

party to the illegal transaction. It has been said that, 'when it appears satisfactorily to the court in proof that the suit is affected by champerty, it is its duty not to permit itself to become the organ or instrument of carrying out the champertous agreement, but it should repel the plaintiff and his suit.' Webb v. Armstrong, 24 Tenn. 379.

Champerty need not be pleaded and an issue need not be formed in regard thereto in order that it may be established and taken advantage of in the suit. It cannot be waived by any party to the litigation, nor stipulated out of the case. The taint of champerty does not affect the merits of a case at all, but affects the right of the champertor to use the court, regardless of the mere merits of his claim. * * *"

* * * *

CONCLUSION

In view of the foregoing and the election of the Respondent Mary V. Bowes to make no answer in this proceeding, the Petition for Writ of Certiorari should be granted and the cause should be remanded with instructions to vacate the Judgment, Opinion and Order of the District Court in this cause.

Respectfully submitted,

IRVIN LECHLITER
910 Seventeenth Street, N.W.
Washington, D. C. 20006
Attorney for Legal Integrity Preservation Society, Inc.

HENRY G. BARTSCH
3601 - 34th Street, N.W.
Washington, D. C. 20008
Pro Se

November , 1968